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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 9 1995

Non-Confidential

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: NSPS, NESHAP and HON Applicability Determination

FROM: for Kathie A. Stein, Director
Air Enforcement Division

TO: Ann Pontius, Chief
Air Compliance and Permitting Section

While you contacted our office regarding a confidential enforcement matter, I would like to respond to you in a non-confidential manner so that this interpretation may be shared with as wide an audience as is appropriate.

You have inquired whether the Hazardous Organic NESHAP (HON) overrides requirements affecting similar equipment under 40 C.F.R. Parts 60 and 61, the NSPS and NESHAPs standards, and if so, when. You pointed out that the HON provision at 40 C.F.R. § 63.160(b), Subpart H for equipment leaks states that:

> "While the provisions of this subpart are effective, equipment to which this subpart applies that are also subject to the provisions of:
> (1) 40 C.F.R. Part 60 of this chapter will be required to comply only with the provisions of this subpart.
> (2) 40 C.F.R. Part 61 of this chapter will be required to comply only with the provisions of this subpart."

The effective date of the HON is the date of final promulgation in the Federal Register (April 22, 1994); the compliance dates for the Subpart H equipment leaks provisions range from October 1994 to October 1995, depending on the group designation. One interpretation of the HON language quoted above might be that the HON supersedes Parts 60 and 61 as of the effective date. However, those same sources would not be required to comply with the HON, under the HON compliance schedule, for six to 18 months. In essence, under this interpretation, there would be a period of up to a year and a half when such sources would not be required to comply with either the HON or the NSPS/NESHAP standards. We reject this interpretation.

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We consulted with OGC and the principal drafters of the rule in the Office of Air Quality Planning and Standards, OAQPS. They agree with our assessment that no such anomalous situation was intended. It is EPA's interpretation that Section 63.160(b) of the HON quoted above means that when compliance with the provisions of the HON is required, compliance with duplicative requirements of the NSPS or NESHAP is not required. We do not want to allow a source to not be subject to either standard for any period. Penalties for violations of the applicable standard may be assessed.

Your second inquiry concerns the definition of closed-purge systems. You have asked whether a sampling plan satisfies the requirements of NSPS Subpart VV, NESHAP Subpart V and the HON if it consists of an open valve which will be purged into a standard two gallon open top bucket. The purged material is collected in the open top bucket and then returned to the process. The definition of "closed purge system" is one of the issues raised in the legal challenge to the HON, and is one that we intend to resolve by clarifying this definition. EPA will shortly publish a Federal Register notice on this and other issues related to the challenge to the HON which will codify our interpretation of the meaning of closed purge systems. It was the intention of the rule to ensure that the unacceptable practice of purging to the ground or open ditch be prohibited. Where a closed-vent or closed-loop system is impractical, we intend to approve a system which purges into a container that is kept closed or covered when not being filled or emptied, such as the system you have described.

Please feel free to contact Charles Garlow of my staff at 202-564-1088 with any further questions on these issues.

cc: Regional HON Contacts
Dr. Jan Meyer, OAQPS, OAR
Pat Embrey, OGC
Linda Lay, ORE-Air, OECA